IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10984 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHMADBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10984 of 2001

MR HARIN P RAVAL for Petitioners No. 1-18

GOVERNMENT PLEADER for Respondents No. 1-4

MR KS JHAVERI for Respondents No. 5-6

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 14/12/2001

ORAL JUDGEMENT

In this petition filed under Article 226 of the Constitution, petitioner Nos. 2 to 18 which are

Cooperative Societies and petitioner No. 1 who is a contesting candidate of Agriculture Constituency, have prayed to quash and set aside the impugned order dated November 2, 2001 (Annexure-O to the petition), addressed to the first petitioner, whereby respondent No.4 has refused to include the names of petitioner Nos. 2 to 18 societies in the provisional voters list and final voters list of the agriculturist constituency consisting names of members of the managing committee of Cooperative societies other than cooperative marketing societies in the ongoing election of the Agricultural Produce Market Committee, Bharuch.

2. Petitioner Nos. 2 to 18 are the Cooperative societies registered under the Gujarat Cooperative Societies Act, 1961 ('the Act' for short). Notification dated January 5, 2001 was issued and published by the State Government, whereby Amod Taluka has been bifurcated from the operation of the Agricultural Produce Market Committee, Bharuch and now the area of operation of the said Market Committee is Bharuch and Vagra Talukas. It is contended by the petitioners that since the Government was not holding election for electing the members of the aforesaid two Agricultural Produce Market Committee, a petition being Special Civil Application No. 379 of 2000 was filed, wherein this Court has passed an order to hold the elections as expeditiously as possible. Thereafter, a notification was issued by respondent No.2, notifying October 4, 2001 as the date of declaration of election under Rule 10(2) of the Agricultural Produce Market Rules, 1965 ('the Rules' for short). Thereafter, a detailed election programme was published whereunder various stages of elections are mentioned, whereby December 26, 2001 is fixed for the poll and December 27, 2001 is the date of counting of votes and declaration of result. First preliminary voters' list was published on October 16, 2001. The names of petitioner Nos. 2 to 18 were not included in it. The date fixed for sending the objections and suggestions against the preliminary voters list was fixed on October 30, 2001. Petitioner Nos. 2 to 18 sent letters along with certificates issued by the Bharuch District Central Cooperative Bank Ltd. to respondent No.4 and requested to include their names in the preliminary voters list. On November 1, 2001, respondent No.4, without giving any notice or opportunity of hearing to petitioner Nos. 2 to 18, passed orders, whereby petitioner Nos. 2 to 18 are informed that their names cannot be included in the said list, which has given rise to the present petition.

3. Mr. Harin P Raval, learned advocate for the

petitioners contended that it is true that the election programme is already announced. However, in view of Rule 28 of the Rules, petitioners cannot challenge the election in view of the fact that by non-inclusion of their names in the voters' list, they cannot file election petition and, therefore, there is no alternative remedy except this petition. He, therefore, urged to entertain this petition by issuing rule. In support of his contention, he placed reliance on the judgement of the Division Bench of this Court in the case of MEHSANA DISTRICT CO-OP. PURCHASE & SALES UNION LTD. V. DHADHUSAN BEEJ UTPADAK RUPANTAR & VECHAN KARNARI SAHKARI MANDALI LTD. & OTHERS, 1998 (1) GLH PAGE 170.

4. Mr. Kalpesh S Jhaveri, learned advocate for the newly added party, respondent Nos. 5 & 6, contended that this petition is not maintainable in view of the various pronouncements of this Court as well as the Apex Court by which ratio is laid down that when election programme is declared the Court under Article 226 of the Constitution should not interfere with it, directly or indirectly, by entertaining the petition. In support of his contention, he relied upon the judgement of the Division Bench of this Court in the case of AKBARBHAI RAHIMBHAI MOMIN V. STATE OF GUJARAT, 2000 (2) GLH 174. He also relied upon the latest pronouncement of the Supreme Court in the case of SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA, AND ANOTHER V. STATE OF MAHARASHTRA AND OTHERS, 2001 AIR SCW 3959. He, therefore, submitted that there is no substance in this petition and urged that the petition may be rejected att the admission stage.

5. Mr. Premal Joshi, learned AGP appeared for respondents Nos. 1 to 4. He contended that the point involved in this petition is squarely covered by the latest pronouncement of the Supreme Court, therefore, this petition deserves to be rejected.

6. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and also the judgements cited at the bar.

7. There is no manner of doubt that the election programme is already published which is annexed at page 64. Election Process has commenced from October 4, 2001 and the date of counting is December 27, 2001. This petition came to be filed on November 12, 2001, therefore, petition came to be filed after announcement

of election programme.

8. In the case of AKBARBHAI RAHIMBHAI MOMIN V. STATE OF GUJARAT & OTHERS (supra), Division Bench of this Court has observed that a grievance regarding validity of the voters list can be made under S. 28 of the said Rules which provides the machinery for determination of an election dispute which touches the validity of an election only after the result of the election is declared. This is not an extraordinary or exceptional case that can justify interference under Art. 226 of the Constitution of India by this Court. In fact, the law on this aspect in the particular context of preparation of a voters list under this very Rule is since long settled by two Division Bench decisions of this Court in Patan F & S.S.M. Ltd. 1986 GLH 430 and M.D.Cooperative S & P Union 29(2) GLR 1060 and is in no way diluted by the subsequent decision rendered in 1998 (1) GLH 170.

9. A similar question arose before the Supreme Court in the case of SHRI SANT SADGURU JANARDAN SWAMI (supra). Supreme Court was dealing with the case under the Maharashtra Cooperative Societies Act 1960. Almost all the provisions contained in the said Act are perimateria with the provisions contained in the Gujarat Cooperative Societies Act. In the said judgement, Supreme Court has held that ;

> "Chapter XIA of the Act was enacted and the rules were framed specially to deal with the election of the specified societies under S.73G of the Act, S.144X provides that various stages of election shall also include preparation of the list of voters. Once the statute provides that preparation of the voters' list shall be part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified society. A perusal of the Rules discloses that the preparation of list of voters, filing of objection against the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters list, decision on the objection by the Collector, finalisation of electoral rolls, holding of

election and declaration of result of the election. From the scheme of the Act and Rules it is clear that the preparation of voters' list is a part of the election process for constituting managing committee of a specified society. The writ petition challenging the order declaring the election schedule on ground of illegality in preparation of voters list would therefore be not maintainable."

10. In view of the settled principles laid down by the Apex Court as well as this Court, the writ petition to quash electoral roll is not maintainable. Such challenge can be raised in an election petition. In view of this, there is no merit and substance in this petition which deserves to be rejected at the admission stage itself.

11. For the foregoing reasons, the petition fails and accordingly it is rejected at the admission stage. Notice is discharged. No order as to cost.

(A.M.Kapadia, J)

Jayanti*